

# SCHILLER McMAHON

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**VIA E-MAIL Dalvin.Adebisi@njcourts.gov**

The Honorable William Daniel, J.S.C.  
Judge of the Superior Court  
Union County Courthouse  
2 Broad Street  
Elizabeth, New Jersey 07207

**Re: Expungement Petition of Khaseem Greene**  
Docket No.: UNN-445-18

Dear Judge Daniel:

This Office is in receipt of the State's letter dated December 6, 2018, wherein the Union County Prosecutor's Office, in truly disgraceful fashion, opposes the expungement of the falsely accused, innocent man, Khaseem Greene, a former NFL Linebacker, 2-Time Big East Defensive Player of the Year, and consensus All-American born and raised in Elizabeth, New Jersey.

The Union County Prosecutor's opposition to Greene's petition is motivated by retaliatory animus that the State seeks to veil by hiding behind an unconstitutional, ne'er applied, statute, which disproportionality and unconstitutionally targets and harms persons of color, including Mr. Greene. For the reasons which follow, the State's opposition should be summarily dismissed, and the Petition for Expungement granted.

To the contrary, were the Court to accept what the Union County Prosecutor urges it to do, the following takes place: an actually innocent man who is arrested, prosecuted and incarcerated for a crime he did not commit, that dares to exercise his First Amendment right to file a civil rights lawsuit in our federal courts, will be punished and retaliated against by the very same Prosecutor that wronged him in the first place, because the very same Prosecutor's Office (Union County) that falsely arrested, prosecuted and incarcerated Greene is now the very same Office that refuses to allow Greene to expunge the false arrest, because, and the Prosecutor's Office presents no other reason, an African-American man dared to file a federal civil rights action against those Caucasian prosecutors and police that destroyed his career and dreams. Because such a result is incompatible with justice, as well as the United States Constitution, the State's argument must fail.

The first reason the State's argument fails is because the First Amendment guarantees the right to file a lawsuit in our courts. See *NAACP v. Button, Virginia*, 371 U.S. 415 (1963); *Boddie v. CT*, 401 U.S. 371 (1971). "The right of access to the courts is indeed but one aspect of the right to petition." *California Motor Transport v. Trucking Unlimited*, 404 U.S. 508, 511 (1972).

Indeed, now-retired Supreme Court Justice Sandra Day O'Connor, writing for the United States Supreme Court in 2002, stated that "[w]e have recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights and have explained that the right is implied by the very idea of a government, republican in form." *BE&K Construction, Co. v. NLRB*, 536 U.S. 516 (2002). This was merely echoing what has been stated for decades, indeed, since the Founding, which is that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." *Bill Johnson Restaurants v. NLRB*, 461 U.S. 731, 741 (1983). For additional background and context on the First Amendment right of access to the Courts, Yale Law School professor Benjamin Cover touched upon and catalogued the constitutional history of the First Amendment in an article entitled "*The First Amendment Right to a Remedy*," available at [https://law.yale.edu/system/files/area/center/liman/document/50-4\\_cover.pdf](https://law.yale.edu/system/files/area/center/liman/document/50-4_cover.pdf).

Thus, when the Prosecutor's Office that began this nightmare for Greene, continues to punish and retaliate against Greene for asserting his First Amendment rights to file a civil suit, the Prosecutor's conduct should not be condoned by this Court, but rather condemned, and harshly condemned at that. A copy of the filed civil rights complaint delineating the prosecutorial misconduct is attached herein as basis for the Court to conclude that the State is acting from retaliatory animus against my Muslim, African-American client. That said, the State's motives need not be determined for an as-applied challenge to succeed.

Second, the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution, passed following the Civil War whose purpose was to end centuries of legalized racial segregation and slavery, explicitly and unequivocally disallows this statute's survival, whether it be considered facially unconstitutional (as-written), or unconstitutional as-applied to Mr. Greene.

Equal protection means equal protection, and when the State's sole reason to oppose Mr. Greene's expungement application is because he has filed a federal civil rights action, whereas if Greene had not filed a civil rights action they would not oppose, that is an obvious violation of the guarantee of Equal protection. See U.S. Const., amend XIV.

Further, as any first year law student knows, separate but equal treatment was outlawed by the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1964), and we pray that Your Honor, just as the Justices did in *Brown*, will announce to this Prosecutor's Office that in our criminal courts, or at least in Your Honor's courtroom, "separate but equal has no place." *Brown* at 495.

Thus, because Greene is exercising his First Amendment rights (by filing suit in a court of law), Greene is being treated separate, and not equal to someone who did not file a constitutionally-protected civil rights action. Thus, because my black Muslim client has deigned to protest his treatment at the hands of Caucasian prosecutors in a court of law, he is relegated to second-class citizen status and prevented from exercising the very Privileges and Immunities that any other

citizen would be able to exercise, including his right to seek an expungement and file a civil rights action. *See also* U.S. Const., Art. IV, Sec. 2, Cl. 1 (Privileges and Immunities Clause”).

The State’s argument fails because the State, motivated by First Amendment retaliatory animus, *see Lozman v. Riviera Beach*, 2018 WL 3013809 (United States Supreme Court) (2018), is hiding behind an outdated, and quite simply, racist statute that allows Prosecutor’s to punish those whom the State has already wronged, to wit and nearly unanimously, men of color who were falsely charged and often-times incarcerated for crimes they did not commit.

Under Prosecutor Monohan’s Office’s “theories” of the law, an innocent man could spend two decades behind bars for a crime he did not commit and, upon release, if that man dares to file a civil rights suit because his rights were violated, then that Prosecutor who previously incarcerated an innocent man will continue the punishment by refusing to allow the innocent man to expunge his false criminal record, thereby damaging his ability to support himself, his children and his family, to say nothing of restoring his utterly destroyed reputation and severely damaged emotional state.

Rather than the Union County Prosecutor’s Office show any humility and acknowledge the horrible things they have done to Mr. Greene, they double down and continue their targeting of the man, rather than simply leaving him alone to rebuild that which they destroyed.

This is the opposite of justice. In fact, it is utterly disgraceful.

If the State still opposes the petition after receiving this letter-brief, we respectfully request a date and time for oral argument so I can contact the NAACP and members of the Press to be present and, hopefully, solicit civil rights organizations to join as *amici*.

On the other hand, if the State recognizes that their opposition is incompatible with the United States Constitution, and consents in writing to the Petition being granted, we will withdraw our request for oral argument.

In conclusion, Mr. Greene prays Your Honor will reject this utterly racist and retaliatory conduct by the Union County Prosecutor’s Office in their inexplicable and relentless quest to harm Mr. Greene. Justice demands that this Petition be granted.

Thank you for your time and consideration, Judge.

Very truly yours,

**SCHILLER McMAHON LLC**

*/s/ Joshua F. McMahon*

By: \_\_\_\_\_  
Joshua F. McMahon

cc: Acting AP Alan Silver (Via E-Mail)  
Acting Union County Prosecutor Michael Monahan (Via E-Mail)